IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 308 OF 2003
WITH
SECOND APPEAL NO. 309 OF 2003

Shri Rajaram Dnyaneshwar Jadhav .. Appellant
(Orig. Defendant)

Versus

Pandharpur Municipal Council,
Pandharpur, .. Respondents.
(Orig. Plaintiff)

Shri S.G. Page with M.A. Patil, advocate for Appellants.
Shri S.S. Patwardhan, advocate for Respondents.

CORAM: A.S. OKA, J.

DATE : 17th August, 2004.

P.C.:-

1. Heard learned counsel appearing for the parties.

2. The Appellants in both the Appeals are tenants of the Respondent Muncipal council. The Appellants are holding shop premises in a shopping complex known as ‘Rukmini Shopping Center’. The Respondent filed a suit for possession of tenaments occupied by the Appellants after issuing notice of termination under Section 106 of the Transfer of Property Act, 1882. The Trial Court dismissed the suit. However, in Appeal preferred by the Respondent Municipal Council, the decree of the Trial Court has been reversed and decree for possession has been passed against the Appellants. Shri Page appearing for

the Appellants in both the Appeals submitted that notice of termination of tenancy purports to terminate tenancy only on the ground that the Appellants were in arrears of rent. He submitted that there is a finding recorded by both the courts below that the Appellants were not in arrears of rent. He submitted that in view of this position, the termination of tenancy was not legal.

3. He submitted that the Respondent cannot rely on section 92 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 to throw out the Appellants. On the basis of Section 92 of the said Act, the Respondent Council has to seek sanction for extension of time of the lease granted in favour of the Appellants.

4. Shri Page, learned counsel appearing for the Appellants relied upon paragraph 5 of the affidavit filed by one Ashok Ligade on behalf of the Respondent Council. He submitted that the Respondent Council does not need the suit shop premises for any purpose and infact the Respondent desires to auction the shops for profiteering.

5. I have considered the submissions made by Shri Rege. Merely because there is a reference to the arrears of rent in the notice of termination, the same does not become bad in law, if it is otherwise in accordance of Section 106 of the Transfer of Property Act, 1882. the

Service of notice is not in dispute and the tenancy was a month to month tenancy which is terminated at the end of the month and the notice is clearly a 15 days' notice. In view of this position, Respondent Council was entitled to seek a decree decree by invoking the provisions under section 111 of the said Act of 1882.

6. In sofar as the second submission based on section 92 of the said Act of 1965 is concerned, once it is found that the termination tenancy of the Appellants is valid, the Respondent is entitled to decree for possession. Therefore, the said submission cannot be accepted.

7. As far as the third submission is concerned, reference will have to be made to paragraph 5 of the Affidavit of Ashok Ligade which reads thus :

> 5. I say that the Appellant herein has never approached the Respondent Municipal Council with any proposal for compromise. I say that if the appellant herein wishes to retain the suit premises with him, he is entitled to submit his bid when the Respondent Municipal Council would auction the tenancy rights in the suit premises.

8. It is to be borne in mind that the affidavit was required to be filed by the Respondent Council as by filing an affidavit, the Appellants tried to make out a

case that in case of similarly placed tenants, the Respondent Council has entered into settlement and has continued tenancy. In view of the said affidavit, I had called upon the Respondent Council to make a statement on oath as to why no settlement is arrived at with the Appellants. By filing the said affidavit the Respondent Council has stated cogent reasons for entering into settlement with a particular tenant. In the context of this controversy, affidavit has been filed by the Respondent Council. Therefore in my opinion, the statement made in the said affidavit cannot be pressed in to service for contending that the Respondent Council cannot evict the Appellants.

8. The findings of fact recorded by the Appellate court are neither perverse nor illegal. No substantial question of law arises.

9. Second Appeals are dismissed with no orders as to costs.

10. At this stage, Shri Page, the learned Counsel appearing for the Appellants stated that the Appellants are carrying on business in the said shops for substantially long time. He stated that at this stage the Appellants have no other source of livelihood. He submitted that the Respondent Council is going to auction the suit shops to third parties and therefore, the

Respondent Council is not in immediate need of the shop premises. He submitted that time of three years may be granted to the Appellants to vacate the suit shops. The said request is opposed by the learned counsel for the Respondent.

10. The Appellants are not protected by the provisions of the Rent Control Legislation. The pressing need to occupy the suit shops is not brought on record of the suit by the Respondent Council. Considering the fact that the Appellants are carrying on business in the suit shop for a long time, a case is made out for grant of longer time to vacate.

11. Hence, notwithstanding the dismissal of the Appeal, the decree for possession shall not be executed till 31st March 2007 subject to Appellants filing usual undertaking in this Court within a period of four weeks from today. The undertaking will contain usual clauses regarding deposit of arrears of amount equivalent to monthly rent and regular deposit of amount equivalent to monthly rent with the Respondent Council.

12. If the undertaking is not filed within the stipulated period, the decree for possession will become executable.

. All concerned to act on a copy of this order duly

authenticated.

Sd/-

JUDGE